COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

INCOME TAX APPLICATION NO.406 OF 2001
(Old No. 157 of 1998)

The Commissioner of Income Tax, Meerut
..... Applicant

Versus

ONGC as agent of Western Petroleum Services, Dehradun
..... Opposite Party

Shri S.K. Posti, learned counsel for the applicant.
Sri J.P. Joshi, learned counsel for the opp. Party.

Dated: 22.11.2005

Coram: Hon'ble P.C. Verma, J.
Hon'ble J.C.S. Rawat, J.

This is an application under Section 256(2) of the Income Tax Act by the Revenue Department against the order of Income Tax Appellate Tribunal refusing refer the following question of law as framed in the application to this Court for its decision: -

> ***"Whether on the facts and circumstances of the case Hon'ble ITAT was justified in confirming the order of Ld. CIT(A) who set aside the assessment made by the AO u/s 143(3)/263?***

The case of the Department is that original assessment completed under section 143(3) was got cancelled u/s 263 of I.T. Act and reassessment was completed under section 143(3)/263 following the directions given by the Commissioner of Income Tax, Meerut. On an appeal field by the assessee against the orders u/s 263 of I.T. Act, learned ITAT cancelled the said orders under section 263 of I.T. Act. Meanwhile, reassessment was also completed under section

144(3)/263 which was cancelled by the CIT(A) Dehradun. Learned CIT(A) held that since the order u/s 263 on which reassessment order was passed, stands cancelled, the assessment orders do not stand and thus the said orders were also cancelled by the CIT(A). Against the said order of CIT(A), Department filed appeal before Income Tax Appellate Tribunal. The Tribunal vide his order under reference decided the matter against the department. The findings given by the ITAT has been based on the decisions in ITA No.3405/Del/88in the case of ONGC as agent of ETPM, ITA No.3314/Del/88 in the case of ONGC as agent of M/s Schlvmberger Far East.

Learned counsel for the Revenue Department contended that orders relied upon by the learned Tribunal have not been accepted by the Department and the matter is at present sub-judiced before this Court, hence the present application is liable to be allowed. We find force in the contention of learned counsel for the Revenue Department. Since, the judgment of the Tribunal is sub-judiced in reference by this Court, therefore it would be just and proper and would be in the interest of justice to allow the application and to direct the Appellate Tribunal to draw a statement of facts and refer the question of law to this Court for its decision.

Hence, the application is allowed. The learned Tribunal is directed to refer the above statement of fact and record and above question of law to this Court for its decision.

(J.C.S. Rawat, J.) (P.C. Verma, J.)

Rajeev Dang